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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEX LEON HOPKINS,

Defendant and Appellant.

F064310

(Super. Ct. No. F11900006)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. James Petrucelli, Judge.

Barbara A. Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Michael A. Canzoneri and Charles A. French, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Cornell, J. and Poochigian, J.

This is an appeal from judgment entered after defendant Alex Leon Hopkins pled no contest pursuant to a plea bargain. Defendant contends the record reflects two errors that conflict with the terms of the indicated sentence that led to the plea bargain. The People concede we should correct these errors and, after review of the record, we agree. We modify and affirm the judgment.

FACTS AND PROCEDURAL HISTORY

At approximately 4:40 a.m. on December 30, 2010, defendant was riding a bicycle on a Fresno street. Because the bicycle had no lights, Officer Corey Hastings attempted to detain defendant. Defendant rode across several lanes of traffic. When defendant rode into a cul-de-sac and Hastings got out of his patrol car to talk to him, defendant attempted to ride away. Hastings pulled defendant to the ground and handcuffed him. A subsequent search revealed defendant possessed 13 pills later identified as morphine, marijuana, methamphetamine, and an iPod; coincidentally, the iPod belonged to Hastings and it had been stolen from his own car three weeks earlier.

Defendant was charged by information with two felonies, count 1, receiving stolen property in violation of Penal Code section 496, subdivision (a); and count 2, possession of methamphetamine in violation of Health and Safety Code section 11377, subdivision (a). In addition, the information alleged a misdemeanor, count 3, resisting or obstructing a peace officer in violation of Penal Code section 148, subdivision (a)(1), and an infraction, count 4, possession of 28.5 grams or less of marijuana in violation of Health and Safety Code section 11357, subdivision (b). The information alleged four prior prison term enhancements pursuant to Penal Code section 667.5, subdivision (b).

Defendant pled no contest to the information as filed and admitted the four prior prison term allegations, pursuant to an indicated sentence of five years, divided under the realignment sentencing provisions as two years in county jail and three years of supervised release, pursuant to Penal Code section 1170, subdivision (h)(1) and (5). At the change of plea hearing, defense counsel pointed out to the court that there appeared to

be an issue with respect to the paperwork supporting one of the prior prison term enhancements, but that defendant would admit the enhancement because it would be dismissed at sentencing as part of the indicated sentence in any event. The court agreed. When the court imposed sentence two months later, however, the court stated: “With regard to the enhancements pursuant to Penal Code Section 667.5(b), the defendant has four prison priors for an additional four years. The Court will stay one of the prison priors for a term to be imposed of three years. Therefore the total term will be five years. [¶] Therefore the defendant is ordered to serve two years of the imposed term in local custody followed by a period of supervised release ... [of] three years.” (The sentence was composed of concurrent middle terms of two years on counts 1 and 2, a sentence to time served on counts 3 and 4, and one year consecutive each on three of the enhancements.) The abstract of judgment states a total term of five years, composed of “Suspended: 3 YRS” and “Served forthwith: 3 YRS.”

DISCUSSION

The sentencing court has jurisdiction to impose sentence on a Penal Code section 667.5, subdivision (b), enhancement or to strike the enhancement; it does not have jurisdiction to stay the enhancement. (*People v. Langston* (2004) 33 Cal.4th 1237, 1241.) The failure to impose or strike an enhancement results in a legally unauthorized sentence subject to correction on appeal. (*People v. Bradley* (1998) 64 Cal.App.4th 386, 391.) Here, the court clearly announced its exercise of discretion not to impose sentence on one of the enhancements but to do so on the other three. However, the court implemented that exercise of discretion in an unauthorized manner, by staying, rather than striking, the enhancement. Because the court has already announced its exercise of discretion, this is an appropriate case for the appellate court to correct the unauthorized sentence, as respondent recognizes. We will modify the sentence by striking the fourth enhancement allegation in the information. Because the abstract of judgment does not currently reflect the disposition of the fourth enhancement allegation, and stricken

enhancements are not to be included on the abstract of judgment (see Judicial Council Forms, form CR-290, par. 3), no change on the abstract of judgment is necessary to implement this correction of sentence.

The abstract of judgment, as noted above, does not conform to the sentence imposed by the court. We will remand this matter for preparation of a corrected abstract of judgment, stating in paragraph No. 12 a sentence of two years to be served forthwith.

DISPOSITION

The judgment is modified to strike for sentencing purposes the fourth Penal Code section 667.5, subdivision (b), enhancement allegation (Sacramento County) set forth in the information. As modified, the judgment is affirmed. The matter is remanded for the purpose of preparation of an amended abstract of judgment reflecting a period of incarceration of two years to be served forthwith, and for distribution of the corrected abstract to the proper authorities.